

WESTERN RESERVES OIL CO.

IBLA 80-147

Decided March 31, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, holding oil and gas lease to have expired at the end of its primary term. W 21459.

Affirmed in part, reversed in part, and remanded.

1. Oil and Gas Leases: Extensions -- Oil and Gas Leases: Rentals -- Oil and Gas Leases: Termination

The lessee of an oil and gas lease, issued after Sept. 2, 1960, which has reached the end of its primary term, must submit the rental for the first year of an anticipated extended term under 30 U.S.C. § 226(e) (1976) on or before the regular anniversary date of the lease. Failure to submit the rental timely results in the automatic termination of the lease by operation of law under 30 U.S.C. § 188(b) (1976). Where the lessee shows that his failure to pay rental timely is justifiable, he pays the required rental within 20 days after the due date, excluding the normal business days the office is closed due to snowstorms, and he otherwise complies with statutory and regulatory requirements, he is entitled to reinstatement of his lease under 30 U.S.C. § 188(c) (1976).

APPEARANCES: R. C. Beveridge, General Partner, for appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This appeal is taken from a decision dated November 13, 1979, by the Wyoming State Office, Bureau of Land Management (BLM), holding oil

and gas lease W 21459 to have expired at the end of its primary term on October 31, 1979.

The lease was originally issued effective November 1, 1969, for a period of 10 years. On August 8, 1979, the lease was committed to the Treasure Unit (Treasure Unit Agreement, Sweetwater County, Wyoming, approved on June 20, 1979). On November 7, 1979, the Geological Survey notified BLM that on October 31, 1979, a well was being drilled within the Treasure Unit which would entitle lease W 21459 to a 2-year extension by drilling.

The decision appealed from reached appellant on November 20, 1979. It stated that because of the drilling, the lease would be "eligible for a two-year extension," but held the lease to have expired because appellant had not paid the eleventh year rental.

Appellant's essential contention on appeal is that it was unaware of drilling within the unit and did not know that any action was required with respect to the lease before it received BLM's decision. Appellant submitted late payment (\$58) to BLM on November 26, 1979. It contends that such payment is timely under 30 U.S.C. § 188(c) (1976), and the lease should be reinstated.

[1] The interaction of the extension by drilling provisions and the rental provision of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 181 (1976), was extensively discussed in Oil Resources, Inc., 28 IBLA 394, 84 I.D. 91 (1977). The crux of that discussion, applicable here, is that under the above statute, a lessee is required to pay rental on or before the anniversary date of the lease (here November 1, 1979) in order to maintain the life of the lease into an anticipated extended term. The failure to remit the rental timely causes the lease to terminate automatically by operation of law pursuant to 30 U.S.C. § 188(b) (1976). Appellant adverts to 30 U.S.C. § 188(c) (1976) which requires, apart from a showing that failure to pay was justifiable or not due to a lack of reasonable diligence, that the required rental be filed within 20 days after the anniversary date.

[2] Appellant asserted, and we have so verified informally, that the BLM Wyoming State Office was closed because of a blizzard from November 20, 1979, until November 26, 1979, when the rental payment was made. This was the next day the office was open to the public. Therefore, the payment fell within the ambit of 43 CFR 1821.2-2(e) which has the effect of treating the payment as though made on November 20. Thus the rental must be deemed to have been submitted conformably with the 20-day requirement of 30 U.S.C. § 188(c) (1976).

BLM did not issue a decision until November 2, 1979, segregating out the base lease, W-21459, the nonunitized portion, W-69910, which under the terms of 30 U.S.C. § 226(j) (1976) and 43 CFR 3107.4-3, would continue for a period of at least 2 years from the date of commitment of a portion of W-21459 to the Treasure Unit, i.e., August 8,

1981, assuming all other requirements of law (including payment of rental) had been met.

However, the appeal is directed to the unitized portion, W-21459, which was entitled to a 2-year extension from October 31, 1979, since Davis Oil Company the unit operator, commenced operations on a test well on committed land, located in the SW 1/4 sec. 33, T. 24 N., R. 101 W., sixth principal meridian, Wyoming. On October 31, 1979, the well was at a depth below 14,126 feet, a qualifying depth. Of course, the failure to pay rental timely caused W-21459 to expire by operation of law, the question in issue is whether the lease may be reinstated.

We have established that the 20-day provision has been satisfied. We now find that appellant's lack of knowledge prior to October 31, 1979, that drilling was taking place on the unit on that date, is a sufficient predicate to warrant a finding that the failure to pay timely was "justifiable." Cf. Odessa Natural Corp., 30 IBLA 28 (1977). Therefore, the lease is to be reinstated if consistent with 30 U.S.C. § 188(c) (1976). 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, reversed in part, and the case remanded for appropriate action consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joan B. Thompson
Administrative Judge

1/ In the absence of an issued oil and gas lease for the lands in issue.

